IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16610 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESH ALIAS RAJU KALIYO S/O MADHUKAR GOGAVALE(MARATHI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16610 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MS. PAURAMI SHETH, LD. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 12/02/2004

ORAL JUDGEMENT

1. Heard Mr. A.K. Pandya for Ms. K.U. Mishra, learned advocate for the petitioner and Ms. Paurami

Sheth, learned AGP for the respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner has been challenging the order of detention dated 14-8-2003 (Annexure-A) passed by respondent No.2 under section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter 'PASA Act') and prays for quashing of said detention order and setting the petitioner at liberty.

3. The detention order at Annexure-A as suggested from the petition has been executed on the same day and the petitioner was taken in detention, also served with grounds of detention Annexure-B. As per the grounds of detention two unregistered cases in respect of the incident dated 6-5-2003 and 25-5-2003 have also been filed against the petitioner. It is suggested that even unregistered cases are also in respect of the offences alleged to have been committed under the provisions of Indian Penal Code.

4. It is also alleged that the petitioner is a dangerous person and has been administering threat by show of deadly weapons to the innocent business persons in the locality and because of the apprehension nobody comes forward to give complaint against the petitioner and the identity of the witnesses have been concealed for the reason of safety to their person and property. It is submitted by Mr. Pandya that, the acts alleged against the petitioner related to the maintenance of law & order and not the public order and therefore, the detention order is liable to be quashed.

5. In the submission of learned AGP, the activities resorted to by the petitioner of extorting money by administering threat by showing deadly weapons are prejudicial to the maintenance of public order and therefore the respondent is justified in passing the detention order resorting to section 3 (2) of the PASA Act.

6. In the case of Smt. Tarannum Vs. Union of India and Others, 1998 Cr.L.J. 1414, the Apex Court in para-6 has reproduced the observations in the case of Smt. Angoori Devi for Ram Ratan Vs. Union of India (1989) 1 SCC 385 as follows :

" The impact on "public order" and "law and order" depends upon the nature of the act, the place where it is committed and motive force

behind it. If the act is confined to an individual without directly or indirectly affects the tempo of the life of the community, it may be a matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquility, it may fall within the orbit of the public order. This is precisely the distinguishing feature between the two concepts. Sometimes, as observed by Venkatachaliah, J, in AYYA alias Ayub v. State of U.P. (AIR 1989 SC 364 at p. 370): "What might be an otherwise simple 'law and order' situation might assume the gravity and mischief of a 'public order' problem by reason alone of the manner or circumstances in which or the place at which it is carried out. " Necessarily, much depends upon the nature of the act, the place where it is committed and the sinister significance attached to it.

As for example dare-devil repeated criminal acts, open shoot out, throwing bomb at public places, committing serious offences in public transport, armed persons going on plundering public properties or terrorising people may create a sense of insecurity in the public mind and may have an impact on "public order". Even certain murder committed by persons in lonely places with the definite object of promoting the cause of the party to which they belong may also affect the maintenance of 'public order.' "

7. On behalf of the petitioner reliance has also been placed on the decision in the case of Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, XXXVI (2) GLR 1268. The Apex Court dealing with Section 2 (c) and 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 in the case of the petitioner against whom 3 cases were registered in para Nos. 8 and 9 observed as follows:

Para.8

" The Act has denied "dangerous person" in clause (c) or Sec.2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI of Chapter XVII of the Penal Code or nay of the offences punishable under Chapter V of the Arms Act. The expression

"habit" or "habitual" has, however, not been defined under the Act. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. It, therefore, necessarily follows, that in order to bring a person with the expression "dangerous person" as defined in clause (c) of Sec. 2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII of I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of I.P.C. or Chapter V or Arms Act cannot be characterised as a habitual act referred to in Sec. 2 of the PASA Act.

Para.9

Sub-Sec.(4) of Sec.3 also provides that for the purpose of Sec.3, a person shall be deemed to be 'acting in any manner prejudicial to the maintenance of public order' when such person is a "dangerous person" and engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall within the ambit of the expression 'public order'. A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. "

9. In the instant case also the acts alleged against the petitioner are directed against the individual and the offences alleged are for committing theft under section 379 of the I.P. Code. Following the principle

laid down in the case of Ashokbhai Jivraj (supra) the order could have bene passed for maintenance of public order and the detention order under the PASA Act would not be available to the respondent, looking to the facts of the present case.

10. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 14-8-2003 (Annexure-A) passed by respondent no.2 against the petitioner-detenu Rajesh @ Raju Kaliyo is hereby quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Dt: 12-2-2004 (N.G. Nandi, J)

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